

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT

In re application of:

Calvez et al.) Group Art Unit: 2828
)
Serial No. 10/550,843) Examiner: Nguyen, Tuan N.
)
Filed: April 20, 2007)
)
For: VERTICAL-CAVITY)
SEMICONDUCTOR)
OPTICAL DEVICES)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Dear Sir:

This is in response to the Office Action mailed July 2, 2009, which included an election of species requirement.

Submitted herewith is a Request for Extension of Time, and required fee, extending the period for responding to the Office Action to and including September 2, 2009.

The Examiner has required election between the species of figures 3a/b, figure 5, figure 6, figure 9, figure 10, figure 11 and figure 12.

Applicant provisionally elects the specie of figure 12. The claims that read on the specie of figure 12 include claims 1, 2, 7-12, 15 and 19-27. Applicant traverses the election of species requirement.

All of the present claims 1-27 are directed to optical devices and a method for engineering an optical device. Thus, all of the claims are closely related and present no undue burden to the Patent and Trademark Office in considering all the claims in the above-identified application. This is particularly true since each of the independent claims 1, 20, 21, 22 and 25 read on the same specie.

As a further point supporting traversal of the election of species requirement, the Examiner's attention is drawn to Article 27 of the Patent Cooperation Treaty (PCT) which forbids imposition by national patent offices of requirements as to the form or content of an application that are different from or in addition to those requirements set out in the PCT and its Regulations.

Thus, applicant submits that Article 27 PCT prevents the U.S. Patent and Trademark Office from applying the U.S. national requirement for election between patentably distinct species in respect to an International Application in the U.S. national phase, such as in the present circumstance, as those U.S. requirements are not found in the PCT. Moreover, no objection of lack of unity of invention under Rule 13 PCT was raised against the above-identified application in the international phase.

Because of Article 27 PCT, the U.S. Patent and Trademark Office is not able to apply national requirements regarding claiming groups of inventions additional to those of Rule 13.2 PCT. Further, the existence of Rule 13.5 PCT, which allows States to apply the provisions of their national laws relating

to the treatment of claims claiming groups of inventions to utility model applications, confirms that States are not allowed to apply the provisions of their national law relating to those matters to patent applications, such as the above-identified patent application.

In view of the above, applicant respectfully requests that the election of species requirement be withdrawn.

Applicant respectfully requests early and favorable action in the above-identified application.

Respectfully submitted,



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